Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1566.

SARGENT-WELCH SCIENTIFIC COMPANY,
Petitioner,

vs.

VENTRON CORPORATION AND VENTRON INSTRUMENTS CORPORATION,
Respondents.

RESPONDENTS' REPLY TO SUPPLEMENTAL BRIEF FOR PETITIONER.

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Dated: August 7, 1978.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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In its Supplemental Brief for Petitioner, Sargent-Welch repeats the same contentions it made in its Petition for Certiorari, and succeeds only in demonstrating once again the wholly factual character of the issues presented by the interlocutory decision below.

Petitioner starts from the wholly fallacious premise that respondents "force[d] unwanted millibalances" on dealers (pp. 2-3) and, proceeding on that fallacious premise, argues that a legal issue is presented as to whether any further intention is required to violate Section 2 of the Sherman Act. However, as pointed out in our Brief in Opposition to the Petition for Certiorari in this case (pp. 6-8, 10, 12-13), both courts below refused to accept the premise on which Sargent-Welch now

relies. Contrary to petitioner's assertions, as the most elementary examination of the opinions below demonstrates, neither court found that respondents had "force[d] unwanted millibalances" on dealers.

It is also an egregious distortion to say, as petitioner does (p. 3), that "The court thus ruled, as a matter of law, that petitioner's proof of Cahn's general purpose (desire or motive) to achieve an inherently anti-competitive end was insufficient to establish a violation of the Sherman Act, § 2". Clearly neither court below found such a "general purpose". Indeed, it was to ascertain Cahn's purpose that the Court of Appeals remanded the case to the District Court for further findings. Nor did the Court of Appeals take issue with the District Court's findings that no lessening of competition or restraint on trade had been shown. Sargent-Welch is thus in the position of asking this Court to accept their own erroneous reconstruction of the decisions below as a predicate for deciding a fictitious legal issue.

Sargent-Welch calls this Court's attention to its recent decision in *United States* v. *United States Gypsum Co.*, 98 S. Ct. 2864 (1978), but that decision was not a Section 2 case and in any event did not in the slightest dispute the relevance of the *purpose* of conduct. It was for that reason, as already pointed out, that the Court of Appeals remanded this case to the District Court for further findings.

Sargent-Welch's Supplemental Brief thus merely confirms the conclusion previously urged by respondents: that the issues in this case are factual in nature, that the decision below is interlocutory and wholly in accord with the decisions of this Court

and other Courts of Appeals, and that the case is therefore inappropriate for review by this Court on certiorari.

Respectfully submitted,

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